Calendar No. 116

101st Congress *1st Session*	SENATE	REPORT 101-45

AIR TRAVEL RIGHTS FOR BLIND INDIVIDUALS ACT

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 341

together with

MINORITY VIEWS

JUNE 12 (legislative day, JANUARY 3), 1989.—Ordered to be printed

Filed under authority of the order of the Senate of June 9 (legislative day, January 3), 1989

U.S. GOVERNMENT PRINTING OFFICE

29-010 WASHINGTON : 1989

S263-10

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUYE, Hawaii
WENDELL H. FORD, Kentucky
J. JAMES EXON, Nebraska
ALBERT GORE, JR., Tennessee
JOHN D. ROCKEFELLER IV, West Virginia
LLOYD BENTSEN, Texas
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
RICHARD H. BRYAN, Nevada
CHARLES S. ROBB, Virginia

JOHN C. DANFORTH, Missouri
BOB PACKWOOD, Oregon
LARRY PRESSLER, South Dakota
TED STEVENS, Alaska
ROBERT W. KASTEN, JR., Wisconsin
JOHN McCAIN, Arizona
CONRAD BURNS, Montana
SLADE GORTON, Washington
TRENT LOTT, Mississippi

RALPH B. EVERETT, *Chief Counsel and Staff Director*
WALTER B. MCCORMICK, JR., *Minority Chief Counsel and Staff Director*

Calendar No. 116

101ST CONGRESS
1st Session

SENATE

REPORT
101-45

AIR TRAVEL RIGHTS FOR BLIND INDIVIDUALS ACT

JUNE 12 (legislative day, JANUARY 3), 1989.—Ordered to be printed

Filed under authority of the order of the Senate of June 9 (legislative day, January 3), 1989

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 341]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 341) to amend the Federal Aviation Act of 1958 to prohibit discrimination against blind individuals in air travel, having considered the same, reports favorably thereon, and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to prohibit an air carrier from restricting the seating in aircraft on the basis of the visual acuity of a passenger or the use by a passenger of a white cane, dog guide, or other such means of assistance.

BACKGROUND AND NEEDS

In 1982, the Civil Aeronautics Board (CAB) issued regulations under section 504 of the Rehabilitation Act of 1973 to prohibit discrimination against handicapped persons during the provision of air transportation. In June 1986, however, the Supreme Court ruled that, because the major commercial U.S. airlines were not direct recipients of Federal financial aid, they were not required to

comply with the non-discrimination provisions of the 1973 Rehabilitation Act *(U.S. Department of Transportation* v. *Paralyzed Veterans of America)*. Prompted by this decision, Congress enacted the Air Carrier Access Act of 1986 (Public Law 99-435), which prohibited all air carriers from discriminating against otherwise qualified handicapped persons provided such action is consistent with the safe carriage of all passengers. The bill directed the Department of Transportation (DOT) to issue implementation regulations within 120 days.

In the hope of resolving several potentially controversial issues, DOT established an advisory committee of all interested parties to enter into negotiations over the development of these implementing regulations. The committee met several times, but disbanded when the Federal Aviation Administration (FAA) and DOT decided that exit row seating was solely a safety issue and should be addressed in a separate FAA rulemaking. Subsequently, in June 1988, DOT issued a Notice of Proposed Rulemaking relating to the provisions of the Air Carrier Access Act. DOT has stated it will not finalize these rules until the exit row seating issue is resolved.

The time consumed in promulgating the final regulations required by the Air Carrier Access Act has delayed implementation of the law well beyond the Committee's original expectation. More troublesome is the apparent difficulty that DOT and the FAA have had in applying that Act's broad nondiscrimination mandate to blind persons, who are under the law defined as "handicapped," and should not be limited in their access to air transportation. Specifically referenced is the FAA's Notice of Proposed Rulemaking, published in March 1989, designed to restrict exit row seating. S. 341 attempts to clarify and resolve this situation with respect to blind individuals.

In passing the Air Carrier Access Act, Congress clearly intended that blind persons not be subjected to discrimination in any form in their use of air transportation. Restrictions, imposed in the name of safety, but lacking any legitimate safety basis, that exceed those imposed on other passengers are one such form of discrimination. Many blind persons have been subjected to embarrassing confrontations and even arrest by law enforcement authorities after having been assigned to seats on aircraft near emergency exits. In other instances, because of the presence and use of dog guides, blind persons are restricted to seats in bulkhead rows. At least one carrier restricts the seating of all blind persons solely to those areas as near as possible to floor level exits.

Proponents of S. 341 argue that any such type of seating restrictions for blind persons are not the results of substantiated safety concerns. Existing FAA policies and air carrier safety practices appear to support this position. For example, some passengers who are not blind still could be limited in their ability to perform evacuation functions if seated near an aircraft emergency exit, but nevertheless are free to sit in exit rows. The standard weight of exit doors or windows is anywhere from 40 to 80 pounds, depending on aircraft model and type of exit. Yet, persons who cannot necessarily lift or maneuver the weight of the exit windows or doors are not restricted from occupying seats near the exits. Persons who cannot read or comprehend the emergency evacuation instructions are not

restricted from seats near the exits. Individuals who, judgment, reaction time, or accuracy of movement are impaired by consumption of alcohol are not restricted. Persons with limited mechanical or manual dexterity skills are not restricted. Passengers in these categories and many more are routinely seated near emergency exits. Safety standards established by the FAA and administered by the carriers find such seating practices to be acceptable.

It is clearly the responsibility of the FAA, under the Federal Aviation Act, to establish standards for aircraft cabin safety. However, the Air Carrier Access Act requires that the FAA's safety regulations must not lead to acts or practices that discriminate on the basis of handicaps. Seating restrictions that are based solely on the knowledge of a passenger's blindness place all blind persons into a class of passengers who are assumed to be incapable. This assumption of incapability, when imposed on all blind persons, regardless of ability, is discriminatory. It is especially discriminatory when persons who are not blind are by virtue of that fact assumed to be capable of performing emergency evacuation functions.

Witnesses who testified at the hearing on S. 341 discussed the fact that the FAA had never in the past established regulations to restrict the seating of blind passengers. The FAA based the decision not to restrict seating on evidence reported by the Civil Aeromedical Institute in June 1973. Yet, this is the same evidence that is now being offered to present the case for regulatory restriction.

The Air Carrier Access Act was not intended merely to make air transportation more available to persons with handicaps. It was intended that air carrier procedures and Federal regulations should not discriminate on the basis of handicap. The mere presence or absence of a handicapping condition, as in the case of blindness, should not in and of itself suggest the need for seating restrictions.

Congress did not intend for the FAA to impose discriminatory seating restrictions on blind individuals, especially when such restrictions had been found earlier by the FAA to be unnecessary. S. 341 is designed to clarify Federal policy by requiring that seating restrictions in aircraft not be based on visual acuity and related factors.

Legislative History

S. 341 was introduced by Senator Hollings on February 2, 1989. The bill currently has 31 cosponsors, including Senators Ford, McCain, Gore, Pressler, Robb, and Breaux on the Committee.

The Aviation Subcommittee held a hearing on S. 341 on March 14, 1989. Witnesses included the FAA, the National Federation of the Blind, the Society for the Advancement of Travel for the Handicapped, the Air Transport Association, and the Association of Flight Attendants.

On May 16, 1989, the Committee met in open executive session to consider S. 473. The Committee then ordered the bill reported by voice vote.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget

Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 17, 1989.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 341, the Air Travel Rights for Blind Individuals Act, as ordered reported by the Senate Committee on Commerce, Science and Transportation, May 16, 1989.

S. 341 would prohibit air carriers from restricting the seating of blind passengers in aircraft. Based on information from the Federal Aviation Administration, CBO estimates that enactment of this bill would result in no cost to the federal government or to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mitchell Rosenfeld.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

There are approximately 1.6 million visual impaired individuals in the Untied States, of which some 500,000 are legally blind. Fewer than 10 percent of those who are blind travel regularly on commercial airlines, due largely to socioeconomic conditions. This bill would affect these individuals by prohibiting an air carrier from restricting the seating in an aircraft on the basis of visual acuity, or the use by a passenger of a white cane, dog guide, or other such means of assistance.

The Committee does not anticipate that this legislation will have any adverse economic impact, nor will it adversely affect the privacy of any individual. There will be no increase in paperwork as a result of this legislation.

SECTION-BY-SECTION ANALYSIS

SECTION 1

This section states that the short title of the bill is the "Air Travel Rights for Blind Individuals Act."

SECTION 2

Section 2 amends subsection 404(c) of the Federal Aviation Act of 1958 by adding a new sentence at the end of paragraph (1) of the existing subsection. As enacted in the Air Carrier Access Act of 1986, subsection 404(c)(1) establishes a general mandate that "no air carrier may discriminate against any otherwise qualified handi-

capped individual, by reason of such handicap, in the provision of air transportation." The additional provision added by this bill declares that "an air carrier shall not restrict seating in aircraft on the basis of the visual acuity of a passenger or the use by a passenger of a white cane, dog guide, or other means of assistance."

The Committee intends that seating restrictions, when necessary for the safety of all passengers in an aircraft, be based on safety factors and not on the presence or absence of blindness. Visual acuity, use of a white cane, use of a dog guide, or use of other assistance to aid the blind are characteristics of certain individuals which do not justify treating them differently, or in a more restrictive manner, by comparison with others. Observing this principle is especially critical when other passengers who pose predictable safety risks may not be subject to similar restricitons.

Seating limitations are not justified, in the view of the Committee, absent compelling evidence that they are necessary for the safety of all passengers. Under the Air Carrier Access Act, and as clarified by this legislation, such limitations must be based on identified safety risks that do not rely upon the mere observed presence of a passenger's blindness or visual impairment.

MINORITY VIEWS OF MESSRS. BURNS AND GORTON

We believe it is unwise for Congress to intervene or, as it is attempting to do in this case, overrule the FAA in the formulation of air safety policy. We therefore oppose S. 341, the Air Travel Rights for Blind Individuals Act.

This bill has been portrayed by its supporters as an issue of discrimination. Nothing could be further from the truth. What is at stake in this legislation is the safety of millions of air travelers.

Congress established the FAA for the specific purpose of formulating national air safety policy. It has recently completed a study which came to the following conclusions:

The evidence that the FAA collected from the examination of actual crashes, as well as from simulations, shows that what occurs in the earliest moments after an airline emergency are critical for the passengers' chances of survival. The single most important factor is the opening of the exists. The FAA's research shows that certain passengers are more likely to facilitate an evacuation of an aircraft than others. The FAA has concluded that the seating of blind persons, as well as the infirm, aged, or obese people, may impede the evacuation of an aircraft and that such individuals create an undue safety risk for themselves and every other passenger on the airplane. For those reasons, the FAA opposes S. 341.

The Air Transport Association also opposes S. 341, arguing that because blind passengers and persons with severe visual impairments cannot perform the tasks necessary to ensure emergency evacuation as quickly and correctly as persons with adequate vision, the bill is contrary to the safety interests of the flying public. The Airline Pilots Association joins the ATA in their evaluation of the negative impact this bill would have on the safety of air travelers.

The Association of Flight Attendants opposes S. 341 as well, arguing that the FAA's decision to regulate exit row seating is consistent with earlier rules proposed to improve the ability of passengers to escape in a post-crash fire. It also notes that the proposed rule would bring much needed uniformity to individual airline policy.

The evidence presented by the FAA, coupled with the testimony of the other members of the air travel industry who share similar concerns for safety on our airplanes, leads us to believe that the passage of S. 341 is not in the interest of the general flying public. In fact, S. 341 may prove to be a significant detriment to the advancement of airline safety policy, at a time when we can ill-afford to put our citizens in further risk.

We urge our colleagues considering this legislation to keep in mind the important role with which we have charged the FAA in the formulation of airline safety policy.

CONRAD BURNS.

SLADE GORTON.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL AVIATION ACT OF 1958

(Section 404 of that Act)

RATES FOR CARRIAGE OF PERSONS AND PROPERTY

CARRIER'S DUTY TO PROVIDE SERVICE, RATES, AND DIVISIONS

SEC. 404. (a) * * *
(b) * * *

PROHIBITION ON DISCRIMINATION AGAINST HANDICAPPED INDIVIDUALS

(c)(1) No air carrier may discriminate against any otherwise qualified handicapped individual, by reason of such handicap, in the provision of air transportation. *An air carrier shall not restrict seating in aircraft on the basis of the visual acuity of a passenger or the use by a passenger of a white cane, dog guide, or other such means of assistance.*
(2) * * *
(d) * * *